IN THE SUPREME COURT
STATE OF MISSISSIPPI

ERIC R. BEAMER,	)	
	)	
Appellant,	)	CASE NO. 2008-TS-01368
	)	
	)	
vs.	)	
	)	
	)	
FANNIE M. BEAMER,	)	
	)	
Appellee,	)	

APPEAL

BREIF OF THE APPELLANT
ERIC R. BEAMER

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ORAL ARGUMENT NOT REQUESTED

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this court may evaluate possible disqualification or recusal:

1. Appellants: Eric R. Beamer

2. Appellee: Fannie M. Beamer

3. Counsel of Appellants: Holmes Sturgeon

4. Counsel of Appellee: M. T. Shareff
Mississippi Center for Legal Services

5. Presiding Chancellor: K. E. Middleton

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STATEMENT OF THE ISSUES

A. In the course of a divorce proceeding, does the Chancellor have the authority to examine the validity of an adoption proceeding involving one of the divorcing parties' children.

B. Does the Chancellor in such a case have the authority to set aside an adoption (assuming he has the jurisdiction) if he finds that fraud or undue influence was involved.

C. If an adoption is carried out for the purpose of circumventing other legal requirements or perpetrating a fraud, can that adoption be set aside?

D. Did the Chancellor rule against the overwhelming weight of the evidence?

F. Did the chancellor err in not allowing additional time for discovery?

STATEMENT OF THE CASE

Eric R. Beamer, the appellant herein, and hereinafter referred to only as Eric, married Fannie M. Beamer, the appellee, hereinafter referred to as Fannie, on January 13, 1996. The parties had no natural children together, although Fannie had several by a previous relationship.

Sometime during the year 2004 their marriage began to suffer and periods of separation began. Nonetheless, and in spite of this, Fannie went forward with an adoption suit, in which she intended to adopt her own son's young child who was born in 2002, (this minor shall henceforth be referred to as Q). The natural father, Troy was the son of Fannie, but not Eric. The natural mother of the child was apparently obtaining government aid and we understand a paternity and child support suit had been commenced against Fannie's son Troy. Fannie proceeded to try and adopt her son's child.

Eric knew very little about this alleged adoption and never went to the lawyer's office, court or anyplace involving this adoption. Basically, his soon-to-be-ex wife, who was already partly estranged, moved forward with the adoption, wrongfully informing the Court that Eric was a willing participant.

Eric is not familiar and does not understand these types of documents and isn't sure if he signed the Petition or not, but insists that he had no knowledge of it otherwise.

The adoption, which relieved Fannie's son from paying any child support, was signed by the Court on March 4, 2005, with Eric not present in Court and having no knowledge of the event.

Fannie separated from Eric in August 2005, just a few months after the alleged adoption went through. She then filed for divorce against Eric on August 23, 2006, demanding, among other things, child support for the alleged adopted child. The parties had little property and they consented to a divorce on grounds of irreconcilable differences, leaving for the Court to decide custody and child support and a few other small property matters and the issue of the validity of this adoption, Eric having filed in this divorce his Answer and Counter-Claim requesting the trial court to Set Aside this Adoption.

The testimony elicited in Court made all this clear, but the learned chancellor was aware of the policies and law restricting the Court's ability to set aside an Order of adoption, and was rightfully cautious about doing so.

The Chancellor, probably in an effort to be as fair as possible, took much time in deliberating this, possibly uncomfortable with the situation, but feeling constrained by the present state of the law to be able to do anything to provide Eric with relief. The final order was over one year in coming, reflecting the chancellor's dilemma, as well as the research and effort he unquestionably put into this case. During this year, there had been no child support ordered probably reflecting the Chancellor's uncertainty about the Final ruling.

The final order ordered child support, as well as a significantly large back child support figure dating back in lump sum over the course of that year-long period, and causing Eric to exit this marriage already greatly behind on his child support.

Before the hearing in this matter, Eric's attorney had expressed a desire to complete discovery, and also had filed a Motion to see the Adoption file in

order to review the consents and actual petition, which Eric did not specifically remember signing? The Court did not allow Eric and his attorney to see this adoption file, and the Court ruled at a hearing on February 8, 2007 that no discovery was necessary, and that the Court felt the issues were clear enough to go forward with no discovery at all. We feel that our case, being a rather complex one, required extensive discovery and we feel prejudiced by not being afforded the chance to complete discovery.

It is from this set of circumstances we appeal.

SUMMARY OF THE ARGUMENT

Basically, Eric, the appellant herein argues that he was not a party in practicality in his wife's adoption of her own grandson and that he was not a willing participant in this adoption and knew little about it.

Furthermore, Eric argues that the sole purpose of the adoption was not to develop a nurturing relationship with this minor child, but was so that Eric's step-son, his wife Fannie's son, could be absolved of his responsibility of paying child support.

All these factors combined should grant the trial court the authority to set aside the adoption since it was in reality and in practically a fiction and was a fraud perpetrated upon the court.

Further, Eric argues that he was not allowed a reasonable opportunity to complete any discovery in this case. The trial court decided within six months of the filing date that no discovery was necessary for a case like this. The case was filed in August 2006 and served on Defendant in September of 2006. Plaintiff's attorney contacted and began discussions with Defendant's attorney. An answer was filed in November of 2006. a Motion to Strike was filed in December of 2006, which was set for hearing on February 8, 2007, at which time it was determined that no discovery would be allowed. No adequate reason was provided and Eric was deprived of his right to discovery afforded him under Mississippi Rule of Civil Procedure No. 26.

Appellant, Eric, feels that his case was prejudiced by the Chancellor's decision go forward with no discovery and that the case should be over-turned and remanded.

ARGUMENT

Issues A and B and C and D

We are asking this court to determine whether or not, during the course of a divorce proceeding, the presiding Chancellor has the authority to examine the validity of an adoption proceeding involving one of the children subject of the divorce, and also does that chancellor have the authority to set aside that adoptive relationship if he or she finds that in the adoption proceeding there was fraud or undue influence exercised upon one of the adoptive parents and/or upon the Court.

The simplest and first answer might be that the more rightful and appropriate attack on such adoption should be brought by separate complaint, filed in the adoption proceeding itself. In the case at bar, however, it is the position of the appellant, known hereafter as Eric, that he really did not even know for certain that this adoption had taken place until the divorce proceeding was well underway, and, thus, he became aware at that time of an order of adoption, claiming that he had adopted his wife's grandchild. (See TR, p. 125 Ls. 1-29, et seq.)

Adoptions in many ways are sacred in the law. They involve our children and thus the most important parts of our legal system are devoted to protecting them, and rightfully so. Even the very files of adoption, unlike almost anything else in the body of law, are kept secret and are unable to be accessed without a Court Order, even by attorneys with an interest.

Historically in this state, adoption has held a senior position among legal

procedures immune from regular attack. To set aside an adoption Miss. Code Ann. §93-17-15 clearly states that it must be done within six months (this is, we suppose, if you actually have notice of the adoption or should have known) and after that only for lack of jurisdiction or failure to proceed under the adoption statute. Claims of duress or coercion and other such fraud, presumably, must be brought within that six month period, though it isn't clear. Other cases have opened the door to attacking adoption decrees for a number of reasons not included in the statute. Most other types of orders can always be attacked on the grounds of fraud, coercion, undue influence. But adoptions hold a special status.

It is this writer's opinion that most of this law is constructed to meet issues that arise when a child's natural parent, for whatever reason, wants at a later date to contest and set aside the adoption. Obviously, stability is highly important in a child's life and it is very important public policy that adopted children and their adoptive parents have the security of preventing the kinds of traumatic intrusions into that relationship which one may imagine if the gates of Justice were wide open to endless contests of adoption.

Nonetheless, one act of calculated fraud, not attended in time, could deprive a man or a woman of their own child for the rest of their lives. Surely in the great list of tragedies found occasionally in the law, this must be one of the most sour, and yet so preventable.

Further, this writer believes that, like with many things, Mississippi is still approaching adoption Law as it may have related to our society fifty (50) years ago, when people who couldn't have children adopted a child from an adoption agency or when relatives adopted the orphaned child of a cousin. The modern truth of adoption is much more sinister.

The real truth about many adoptions would be quite distressing if revealed to the public. Right now, from the four corners of our state and all in between, there is adoption abuse. There are adoptions where a ninety (90) year old man on his death bed adopts a two year old. Why would that happen? We all can imagine the truth. It's also very common for a young man who is being pursued by child support to avert his duties by just getting his "momma" or maybe his "grand-daddy" to adopt the child. The child can then draw the older person's social security and other benefits and the real parent is still with the child; can see the child and help rear the child; but in the long run if child support ever comes up again, well, that's now his younger brother, and that's now somebody else's problem. I don't think this is the kind of adoptions the drafters of our statutes had in mind.

In the case *sub judice,* the appeallant, hereinafter referred to as Eric, did not *lose* a child through fraud, he *gained* one, namely his wife's grandson. And now Eric, who, of course, never sees the child, nor has any relationship with him, (see Eric's testimony generally, but specifically TR, p. 120 Ls. 1-29 and p. 117 Ls. 1-29) pays child support to his ex-wife, Fannie, each month, while the child's biological father, hereafter referred to as Troy, often lives there in the home of Fannie, Eric's ex-wife, raising his own blood son. Another man, a man Troy never has to see again, supports Troy's own child. Troy gets the child, while someone else gets the responsibility.

Somewhere in that description there is an inequity that only this High Court can correct. Without a doubt, something in our law needs to change in order to allow our Chancellors the right to feel free to examine, in contexts such as this, an adoption to determine its validity and to determine if any fraud has

occurred.

In the subject case, Fannie's son Troy had fallen behind on his child support and was being threatened by the Court. (TR, p. 93 Ls 6-12 also TR, p. 49 Ls 1-14 and p. 77 Ls 21-26) Fannie desperately wanted to help her son by simply adopting the young child, who will be referred to as Q, born in 2002. By Fannie's own testimony, she stated that she wanted this adoption (TR, p. 33 Ls 20-23) Miss. Code Ann. 1972 § 93-17-3 clearly states who can adopt.

It is well established that a married person whose spouse does not join in the adoption can not adopt. Fannie needed Eric to participate in this, even though he really was told as little as possible about the plan and he had no desire to adopt anyone. His own testimony is repleat with inferences to this. (TR p.113 Ls 19-25 *et seq.*) He said "... I've told her from the get-go that, you know, I had a problem with wasn't any other child coming into the house." On cross examination Fannie was asked, "But you just said that it was all his idea to do it?" Fannie responded, "Yeah, it was, long as I was with him. I guess long as I was with him he was doing it." (TR, p.46 Ls. 2-4). Earlier, when asked, "So this was Eric's idea to adopt this child?" She responded, "Yes, it was because I told him, we talked about it. (TR, p. 45 Ls. 24-25). Her testimony is repleat with statements that make clear that this adoption was her sole idea. She had no intention of Eric being in the child's life. She just knew that Eric worked and that he would pay child support. She summed it up best when she said, "He (Eric) ain't going to never be his (Q's) life." (See TR, p. 46 Ls. 16 and 17). The Order of adoption was dated March 5, 2005. Fannie's final separation from Eric was in August 2005.

Nothing at all in Eric's testimony indicated that he had in practicality ever acted as a father or thought of himself at all as a father to this child. Instead his

whole testimony is significant for all the things he **does not know** about the child. He pointedly said he never considered this to be his child. He never received a father's day gift; he doesn't even know the child's birthday; he doesn't even know what school the child attends. (See TR p. 113 Ls. 22-29 and p. 114 Ls. 1-29 and p. 115 Ls. 1-29 and p. 116 Ls. 1-29 and p. 117 Ls. 1-23) Through all his testimony, it is evident that Eric is not a very good parent to Q, but coupled with his obvious lack of involvement in the adoption process itself, it goes further, much further; It goes to show that Eric isn't much of a parent to Q because he does not consider Q his child, and that is because no adoption ever actually, in practicality took place. It may have taken place on paper (and even that is questionable without the file), but, in practicality, it did not happen. Eric, in fact, attributes the only limited knowledge he has of this adoption to a desire to "...help Troy out." (See TR, p. 117 Ls 24-27). Help Troy out. He also states that he did whatever it was that he did do because his wife kept "nagging" him. (TR p. 121 Ls. 21-24). He said that was the reason he signed any papers he may have signed, but he clearly had no idea what the papers were, and he has maintained that he still isn't really certain that he signed any papers at all. Is this all it really takes in Mississippi to adopt a child?

It is true that Mississippi's two primary statues regarding the abrogation of an adoption are stringent. Basically, *Mississippi Code Annotated Section 93-17-15 (1972)* states:

> (1) "No action shall be brought to set aside any final decree of adoption, whether granted upon consent or personal process or on process of publication, except within six (6) months of the entry thereof."

Furthermore, *Mississippi Code Annotated Section 93-17-17 (1972)* states further:

(1) "For all purposes of this Chapter, the Chancery Court shall be a Court of general jurisdiction and it is declared to be the public policy of the state that no adoption proceeding shall be permitted to be set aside except for jurisdictional defects and for failure to file and prosecute the same under the provisions of the Chapter."

This Court held to the contrary, however, when it declared that, in contrast to these statues, an adoption decree could be subject to post-judgment attack under certain circumstances, such as the lack of proper jurisdiction, either over the subject matter or the parties. The statute fails to make this clear, but the Court clarified that in *Neveda v. Ahumada, 381 So. 2d 147 (Miss. 1980).*

This statute also fails to make it clear that an adoption decree can be attacked if there are clear allegations of fraud, undue influence, or other wrongdoing, or perhaps, as in the subject case, proof that the adoption was in reality a fiction, and represented, therefore, basically a fraud perpetrated upon the Court to avoid other serious legal obligations, namely to help Troy avoid paying child support for his own child. In the subject case, Eric, who, unlike Troy, has a good job and works hard, was put in the middle and labeled with the responsibility of paying child support for this child Q, so Troy wouldn't have to. *In re Estate of Reid, 825 So. 2d* (Miss. 2002)

It's true that there is a strong public policy of finality contemplated by the two statutes referred to above. But this Court put it best in *M.A.S. v. Mississippi Department of Human Services, 842 So. 2d 55 (Miss. 2003)* when it stated the

"finality should yield to fairness." And that is just the case here.

Since Eric was prohibited from even viewing the adoption file and since discovery was prohibited in this case, the greater details about the interworkings and mechanics of this actual adoption case are unknown to us at this time. It isn't known if Eric even signed the Petition at all. He thought he might have, but he wasn't sure. He clearly did not fully understand what, if anything, he signed. (See TR p. 128 Ls 12-26 p. 129 Ls 1-10). In this case, the testimony seems clear. Eric trusted his wife, and may have signed the Petition, (but even this we don't know for sure), but without anything further, it's clear that Eric did not realize he was adopting a child. He never knew for sure until the divorce began.

The reasons for this adoption are also clear. Child support authorities were bearing down on Troy and his mother, Fannie, wanted to help him.

Although greatly different circumstances, this Court did make it perfectly clear *In re Estate of Reid, 825 So. 2d 1 (Miss. 2002)* that an adoption can be set aside if a fraud was committed on the Court. This is yet another judicially created exception to those two stringent statutory rules touting the necessity for finality in an adoption case. Again, we are reminded that finality must yield to fairness. If a fraud is committed upon the Court, the Court can set aside an adoption, and any other order over which that Court has jurisdiction.

What constitutes fraud? Certainly in the instant case, using an adoption to shield her son from child support obligations and appearing in Court without her husband and no doubt telling the Judge how much the Husband really wants the adoption; these things are certainly fraudulent. (TR p. 45 Ls 1-18) The Court has not only a right to know the truth, but a duty to discover it when at issue is the life of a young child. The inconsistencies in Fannie's testimony are remarkable. Take

this as an example:

(1) Q. Okay, what about Troy, what about your child, Troy? Wasn't it true that Troy was going to have to pay child support for this baby?

(2) A. No

(3)Q. Nobody ever said that?

(4)A. Only thing came up when he came up and said he owe a fee saying $58.00 for Court fees before we even...by the time the paper came they had wrote to him. That was like in...before this adoption paper came they wrote him a paper saying he owed a court fee of child support and when they said when the adoption come through to bring the adoption paper and see but he did not get a child support paper until 2005.

It's fairly clear to this writer that the child support officials ceased their attempts to collect once the adoption went through. (TR p. 47 Ls 1-12).

From the standpoint of examining adoptions in consideration of what is best for the child, should we really allow people to adopt who virtually have no desire to do so, whatsoever, and have no interest in the child at all and who are, in reality, not willing participants in the adoption? Courts should be free to examine each such situation and decide if indeed the adoption should be upheld. Of Course, any such examination could be avoided in the divorce by simply conducting such examinations on the frontend of an adoption.

There are many cases that examine the necessity of notice to and consent of the natural parents, but almost no cases approach the necessity of consent to accept the roll of an adoptive parent. There certainly are none in Mississippi.

Some courts from other jurisdictions have held that prospective adoptive parents should appear before the court to determine if they are of sufficient age

and intelligence to understand the character, significance and consequences of adoption. At least several cases exist which illustrate this from other jurisdictions. One older example is *Barnes v Paanakker, 111 F2d 193, 72 App DC 39.* The courts of many jurisdictions have examined age as a factor to be considered in an adoptive parent. *56 ALR 2d 823 § 1 et seq.; Walker v Ellis, 169 Ma 15, 179A 289.* Even spiritual welfare and religion have been factors that have been considered. All this being the case, it stands to reason that any court determining if an adoption is in the best interest of a child should have both adoptive parents brought before it, and, at the very least, should determine for itself if the adoptive parents are fit to serve in that position and further, if indeed each parent actually desires to become an adoptive parent.

All the above considered, it seems that this adoption may in the long run work nothing but a hardship on Q. His own biological father has far more interaction with him. All the witnesses agreed that Troy, the natural father, was still in the picture. (See TR p. 42 LS 7-17). In fact, even Troy's own grandmother stated that Q was continuing to stay with his mother in New Orleans. (TR p. 84 Ls 27-29 and p. 85 Ls 1-8). Troy's sister, Felicia Griffith, explained how close Troy still is with Q and that Q knows Troy as his daddy and that he calls Eric "pawpaw". (TR p. 72 Ls 26-29 and p. 73 1-29 and p. 74 Ls 1-18). It would be much less confusing if this little child Q simply knew his daddy as his daddy. Instead, under the present circumstances, another man, his grandmother's ex-husband, is thrown in the mix and for some reason pays the child support.

Had the court, at the adoption hearing, questioned, or even so much as become acquainted with Eric, it would immediately have seen that this adoption

should not have proceeded. The mere fact that both natural parents desire to give their child up for adoption does not mean that the potential adoptive parents are willing.

Some courts in other jurisdiction have allowed an adoption decree to be annulled or set aside on the ground of fraud or undue influence. *Re L's Adoption,* (County Ct) 56 NJ Super 46, 151 A2d 435. A good example of this is found in an Indiana case, *State ex rel. Bradshaw v Probate Ct.* 73 Ne 2d 769 and a Kentucky case, *Greene v. Fitzpatrick,* 295 SW 896. In both cases the adopting parent was unsure of the effects of the adoption and in one case was subject to the will of the child's natural parent. *State ex rel. Bradshaw v Probate Ct.*73 NE 2D 769; *Greene v. Fitzpatrick,* 295 SW 896; see also *Philips v. Chase*, 89 NE 1049.

Although these are admittedly older cases, discovered through a brief search through *Am Jur,* and they are also cases from other districts, they make it clear that other courts have been willing to re-examine an adoption order and if it appears that the order was entered without the full understanding of its implications by one of the adopting parents, these courts have been willing to set aside the adoption order. The *Philips* case cited above is a good example of a husband manipulating his wife into such an adoption. Our courts, as shown above, have also been willing to allow post-judgment relief from adoption orders under certain circumstances.

In the subject case, a Motion was filed on February 23, 2007 for Access to the Adoption file and a request was made verbally at the first hearing on this matter on February 8, 2007 for additional time to complete discovery. The trial court, nonetheless, held that it felt the case needed no discovery and Eric was never permitted to see the adoption file of Q. To this day, Eric has never again

seen the paper he supposedly signed; he has never been able to speak to the lawyer he supposedly hired and he has no idea if the adoption he supposedly participated in really even took place at all except for the Order of Adoption, a copy of which he was finally given by his ex-wife long after the divorce began. The Court claims to have looked at the adoption file, and we have no reason to doubt that it did. Eric, however, is supposedly a party to this adoption and yet has no knowledge of it at all.

Certainly, proper discovery and access to this file may have had some impact on this case. This High Court should re-consider the stringent Mississippi statutes with their well-meaning provisions against abrogation of any adoption order, and should clarify this law to allow courts to go back and review these orders if facts point them in that direction.

In this case, there's no doubt that the circumstances are such that the Lower Court should have the full opportunity to re-open an adoption case, if it has the jurisdiction, and examine the details to see if fraud was present.

ISSUE D

DISCOVERY

It is also Eric's position that he should have been afforded discovery in this divorce and that his Motion to view the adoption file should have been granted. With that additional information, it may have been possible to determine if, indeed, Eric did sign the petition as Fannie says he did, or if Fannie signed it for him. Many other factors could have been uncovered.

If Eric had been granted discovery, it may have been possible to discredit

Fannie's statements or prove that the adoption was simply for the purpose of absolving Troy of any liability he had for back child support. Many of Fannie's statements at trial were very inconsistent and discovery could have brought this out. For instance, at one point during cross examination it was asked of Fannie if Eric came to Court with her. She stated, "No, we didn't come to Court. We came to court. He didn't have to come. When he signed this stuff he didn't come with us..." (TR, p. 49 Ls. 29 and p.50 Ls. 1-2) Over and over she gave what could only be called dual answers. (ie. No, but yes)

Our discovery rules in this state are very liberal, and, usually we are freely allowed discovery. Chapter 5 of the Mississippi Rules of Civil Procedure covers the many aspects of discovery in this state. Rule 26 of the Mississippi Rules of Civil Procedure makes clear the various methods of discovery that every party in a case has available as a matter of right.

Had there been legitimate questions about the timing of the discovery, certainly the Court could have held, even telephonically, a discovery conference under Rule 26 (c) to fix some sort of time limits. (see M.R.C.P.Rule 26 generally and 26 (c).

To this attorney, this case seemed initially like it may be one that could be resolved. The case was filed on August 28, 2006 and Eric was served September 19, 2006. (Reference is made to the pleadings).

The first actual hearing we had was on February 8, 2007. Counsel opposite had already made a Motion to Strike our Answer because it was late filed, so that he could (fully aware of an attorney on the other side) go forward with a default, as he described it. In Our Answer and Counter-Claim we specifically attacked the alleged adoption which we had never seen at that time.

On February 8, no ruling had ever been made on his Motion to Strike our Answer. So when the first hearing occurred on February 8, 2007, understanding our Chancellor's constant diligence in keeping our docket moving, this attorney was very shocked when the Chancellor stated that our main goal here was "...just simply getting a trial set." (TR p. 10Ls. 15 & 16)

As Eric's attorney, I immediately began discussing the discovery and then the Chancellor said, "I don't think from what I've heard so far, that it's so complex that any great discovery would be necessary and in fact, I would be in favor of just getting a setting and let's go ahead and try to resolve the matter." (TR p.10 Ls. 18-22) He then said "... By the time you all keep running back and forth on these little notions and things you're going to have done more work than if you'd just try it." (TR p. 10 Ls 22-27)

Not willing to give up easy on this, as Eric's attorney, I again asked "Can we have at least 30 days to have interrogatories set because we need to have something so I can at least know what witnesses they have and so forth... I've been hopeful that it would be a no fault divorce but I just don't guess it's going to be." (TR p. 12 Ls 11-16)

But, again the Court responded, "She can testify as to what children they have and he can testify as to what children they have. What other issues do you really have?" (TR p. 12 Ls 17-19) The Chancellor was fully cognizant of the possibility of this adoption dispute, which could be a fairly difficult issue, at best.

The Judge then said "I'm just inclined to move it on now and so, you know, I understand what discovery is but in the course of trying to work this out maybe toward getting an irreconcilable differences you all can just talk frankly

about what's there. Your client can verify if the information is correct, but let's get a setting and try this thing. It's not good for the Court; it's not good for the parties to have this pending out there like this. (TR p. 12 Ls. 21-29)

As the attorney in this case I feel our case was strongly prejudiced by not having the opportunity to pursue discovery. The case was filed August 28, 2006; my client, Eric, was served September 19, 2006; We filed our Answer and Counter-Claim, after contacting counsel opposite, in November, 2006. The other attorney and this writer had discussed trying to work something out for them. Filing discovery usually isn't done until it's clear that there will be no settlement. Its good practice not to make things too adversarial when a compromise is being sought. Not until February 8 was it clear that there was no resolving this, so we prepared to get out our discovery, only to be told by the Court that we were headed straight for trial with no discovery.

We feel that the Chancellor, learned and wise on almost all subjects that come before him, may have been in error in not allowing discovery in this case, which should be remanded and the discovery pursued.

This writer has great respect for this Chancellor. He tries long and hard to be a fair and even-handed judge, and we are certain that his intentions were good, but in this case, the parties were entitled to discovery and this no doubt prejudiced Eric's case.

CONCLUSION

The case *sub judice* is unusual in that normally when one hears of a father objecting to an adoption, it's usually the natural father. In this case, it is the adoptive father who is objecting to the adoption. The natural father is very much in favor of the adoption, but Eric, the alleged adoptive father had been adamantly against it from the start.

So how did this adoption go through and what, if anything, could Eric have done to have prevented it.

It is possible, and that's the best Eric can say, that he signed the Petition. But without knowing anything more about it than that, what could he have done to have stopped this. Apparently not signing it in front of a notary doesn't matter. (See TR, p. 45 Ls. 1-18) Not appearing in Court doesn't seem to matter. This all seems to imply that a person had better be very careful in the state of Mississippi or you just may accidentally adopt a child!

Shouldn't we have more restrictions? Shouldn't the Chancellor be required to meet both the prospective adoptive parents and make sure this is what they both want? Many unscrupulous people want to rid themselves of the burden and responsibilities of their children and are all too wiling to shove them off on others, especially their parents or grandparents. That way they can still see the children, when it's convenient, and yet have none of the responsibilities.

Shouldn't the Chancery Court be charged to see that this kind of thing doesn't happen? And if it does, what recourse under our present law does one have.

In the instant case, most certainly, discovery should have been allowed to

progress to a reasonable end. There were no emergencies pending, and even if there had been, there was nothing the court could not have solved through temporary relief while the case was pending. If nothing else, this case should return to the lower Court in order to complete discovery.

Further, the adoption file should have been made available to Eric and his attorney. There may have been other defects that could have made a difference and that could have proved the fraudulence of this adoption.

Finally, however, the lower Court should have, based on the weight of the evidence, set aside the adoption decree, and, in doing so, forced Troy to be accountable as a parent to his own child.

We implore this Court to find a fair and equitable route that the appellant, Eric, can travel to undo this injustice.

We have to ask ourselves, in Mississippi is it really possible for a person to do nothing more than possibly casually sign an unknown, unread document and nothing more in order to adopt a child. Shouldn't our law require more? And if it is alleged to the Court that this was the only action taken, shouldn't the Court inquire deeper to determine if the adoption was sincere.

This case should be reversed and the law on this subject clarified to meet modern problems in adoption law, and further remanded to the lower court, if necessary, to complete discovery and have an opportunity to set aside any fraudulent adoption.

This writer has researched examples of other modified adoption law from other jurisdictions, but the voluminous material was not included for the sake of brevity. If this court would like the additional material, then this writer stands prepared to provide as supplement to this brief, should the court request it.

RESPECTFULLY SUBMITTED, this the 6th day of February, 2009.

ERIC R. BEAMER

BY:

HOLMES STURGEON
OF COUNSEL
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, Holmes Sturgeon, do hereby certify that I have this date mailed a true and correct copy of the Brief of Appellant to the follows persons:

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So certified this 6th day of February, 2009.

Holmes Sturgeon